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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the matter of)
)
Implementation of Sections 3(m))
and 332 of the Communications)
Act)
)
Regulatory Treatment of Mobile)
Services)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

GN Docket #93-252

To: The Commission

**COMMENTS OF GLOBAL CELLULAR COMMUNICATIONS, INC.
AND JEAN M. WARREN**

Global Cellular Communications, Inc. and Jean M. Warren ("Commenters"), through counsel, hereby submit their comments in the Further Notice of Proposed Rulemaking in the above-referenced proceeding, released May 20, 1994 ("Further Notice"). These comments are limited specifically to the Commission's request for comments on whether the Federal Communications Commission ("Commission") should consider revision of the channel assignment and service area rules applicable to the 220 MHz Service, including wide area type systems with extended implementation deadlines. Specifically, the Commission incorporated the Petition of SunCom Mobile and Data, Inc. ("SunCom") seeking permission to aggregate non-nationwide 220 MHz 5-channel blocks on a regional basis and the accompanying waiver request for an extended implementation schedule.¹

¹ Request for Declaratory Ruling and Request for Rule Waiver, dated February 1, 1994.

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I. Background

After much thought, the Commission assigned the 220 MHz spectrum on a 70-mile co-channel reassignment basis and pursuant to this regulatory framework the industry has begun to build channels across the country. The channel assignment and service area rules for 220 MHz are sufficiently flexible to achieve comparable technical acquirements between 220 MHz services and competitive CMRS services -- even though the 220 MHz service is not substantially similar to the CMRS Services. Nevertheless, no data has been submitted to indicate that the current 220 MHz Rules prohibit the type of "Network Plan" envisioned by SunCom. The concept of "regional licensing" of 220 MHz systems, although not per se defined in the Rules, exists de facto through the aggregation of individual 220 MHz licenses under common management agreements. There is in fact no practical reason to redefine the channel assignment and service area rules for the 220 MHz industry as suggested by SunCom. What the SunCom Petition appears to be is an attempt to circumvent existing Commission Rules against spectrum warehousing and an attempt acquire the same rights as the nationwide 220 MHz licensees, without any of the public interest obligations.

II. The 220 MHz Channel Assignment and Service Rules

The first portion of the SunCom pleading attempts to establish some kind of reason to permit it to own more than one unconstructed

5-channel license per market. SunCom contends this is necessary because its proposed "Network Plan" involves, on the average, 10 or more 5-channel licenses per market. SunCom's arguments are not convincing. There is no provision the Rules that currently prevents SunCom from acquiring access to the channel capacity it contends it needs through management agreements.

SunCom acknowledges that management agreements could achieve its goal but baldly states that: "simply put, direct ownership, rather than the sustained use of management agreements, is a requisite for any efficient business."² SunCom presents no evidence for this proposition, nor is there any such evidence. A substantial portion of the existing SMR industry operates regional networks based on the use of management agreements. Multiple public companies (which one can only surmise are attempting to run "efficient businesses") such as Nextel, CenCall, Dial Call and GeoTek operate massive numbers of SMR channels pursuant to management agreements. This robust network of regional systems which characterize the SMR industry today belies SunCom's suggestion that its proposed changes to the 220 MHz channel allocation and service rules are necessary to operate an efficient business.

SunCom's further claim that the proposed rule changes are "necessary to allow proposed construction system collateralization

² SunCom Petition at p. 9.

(once value is established via operational success) needed for favorable expansion financing..." is just as fatuous.³ The public SMR companies have raised billions of dollars in financing without the relief SunCom claims is vital. Management agreements can be and routinely are pledged as collateral for financing, and those pledges are readily perfected under the Uniform Commercial Code by the filing of Form UCC-1 forms with state and local authorities.

III. Modification to Section 90.725(f)
of the Rules is Antithetical to the Public Interest

SunCom requests a waiver of Section 90.725(f) of the Commission's Rules in order to implement a commercial 220 MHz narrowband system in dozens of markets across the country. SunCom's proposed Network will consist of multiple 5-channel local 220 MHz licenses in each market.⁴ The Commission should not base any sweeping changes to the 220 MHz Rules under consideration in the Further Notice upon the SunCom Petition.

SunCom never articulates any coherent network plan that is in any way distinguishable from that which a number of other companies are already implementing quite successfully, via management agreements. There is nothing new, there is nothing innovative, there is nothing novel proposed by SunCom which would support such

³ SunCom Petition at p. 9.

⁴ Request for Rule Waiver (Summary).

sweeping extensions of construction deadlines (up to eight years!).⁵

Commenters do not dispute SunCom's observations in its Petition that 220 MHz service can provide an important segment of the public with significant advantages over other mobile communications services, or that it can offer cost-effective high quality dispatch service by virtue of the inherent radio propagation advantages of 220 MHz. There is no dispute that, as SunCom observes, Chairman Hundt and the Clinton Administration have supported the rapid development of the National Telecommunications and Information Infrastructure marketplace. There is no dispute that Chairman Hundt has publicly committed to push for policies that will encourage competition among wireless communications companies.⁶ But all these observations do not make for a plausible argument to grant any kind of extended construction schedule for 220 MHz networks on the scale proposed by Suncom. The SunCom Petition asks for up to eight years to construct. If anything, the

⁵ SunCom's Petition stands in sharp contrast with the petition filed May 11, 1994 by Warren. In her petition, Warren simply requested that nationwide commercial 220 MHz licensees be given the same relief from the Evans case that the Commission gave to local licensees in its Order, DA 94-276, released March 30, 1994. (In that Order, the Commission essentially gave all local licensees a new eight-month construction period.) Warren is seeking a ruling that the construction deadlines in Section 90.725 (for nationwide licensees) also be deemed to have begun on April 1, 1994, in recognition of the delay occasioned by the Evans case. The Warren request is reasonable and limited in scope, and seeks a solution to a real problem (i.e., Evans).

⁶ SunCom Petition at p.7.

need for rapid deployment militates against any unnecessary construction delays.⁷ Given that everything SunCom proposes in its Petition can be achieved under existing the 220 MHz Rules -- and in fact is being implemented by other companies that are actually constructing channels -- the impetus for the Petition is certainly suspect.

The Commission has longstanding precedent on the showing required to obtain extensions of SMR construction deadlines. The Commission standard for waiver of construction deadlines has been clearly set forth in numerous cases and is predicated on a theory that the proposed system is "complex;" "novel;" "highly innovative" or in some manner deserving of additional time to construct other than convenience. See, e.g., American Mobile Data Communications, Inc. 4 FCC Rcd 1082 (1989); Advanced Trained Central System, 3 FCC Rcd 427 (1988); IBM Research and Development 53 R.R. 2d 675 (1983). The SunCom Petition in no way meets the Commission standard which has long been established and in fact utilized effectively by numerous companies with solid plans to implement new and innovative SMR systems. Any rule change which must, at the very least, require a company to meet the public interest standards already established for extended implementation schedules. To do otherwise would simply open the floodgates of spectrum warehousing.

⁷ To repeat, other than the Evans case or other such cases which threaten the viability of licenses, there is no basis for extensions.

Curiously enough, SunCom in its Petition does not in any way indicate that it has even attempted to construct any 220 MHz facilities. It does not indicate that SunCom has invested any significant finances in this industry. While other companies are currently constructing 220 MHz networks, such as SEA, Inc. and Interactive Communications Company, SunCom appears to be sitting back, hoping to obtain special consideration.

SunCom's Petition appears to be a surreptitious attempt by SunCom to acquire nationwide rights to 220 MHz spectrum outside of the Commission's procedure for doing so, and without any concomitant public interest obligations. The four nationwide licensees are selected pursuant to a lottery procedure and required to make significant financial commitments and are subject to regulatory constraints, such as construction buildout and constraints on alienation of ownership. SunCom seeks to circumvent these rules.

IV. Conclusion

The Commission should summarily reject the proposition of SunCom that its proposal be the genesis of any rule changes for the channel allocation or service area rules for 220 MHz systems. Numerous companies are currently competing in the marketplace to build systems and implement regional networks in reliance on the existing rules. SunCom has the same opportunity to compete under the present rule structure, which is sufficiently flexible to

induce substantial companies to invest in this industry and make the 220 MHz service into a viable public service.


Adoption of SunCom's proposal would only result in the warehousing of spectrum. Warehousing is always antithetical to the public interest, but for 220 MHz service it is a particularly egregious result. SunCom should not be permitted to manipulate Commission Rules to find a back door to a nationwide license without the accompanying obligations. If SunCom has some kind of unique "Network Plan" that is any different from the plans which are currently being implemented by many other wide-area 220 MHz companies, then SunCom should come forward with its exact technical proposal and seek consideration on the merits through the current Commission procedures. SunCom's proposal would be detrimental to the infant 220 MHz industry, which has already suffered severe regulatory set-backs.

In summary, SunCom's Petition should be denied in toto.

Respectfully submitted,

**GLOBAL CELLULAR COMMUNICATIONS, INC.
AND JEAN M. WARREN**


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